

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 13, 2008, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Ray Dwyer  
Tom Day  
Rob Schuett

**BOARD MEMBERS ABSENT:** Walter Schmidt

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Rick Scheffler, BA08:024, petitioner  
Attorney John Machulak, Machulak, Robertson & Sodos, S.C.,  
BA08:024, representing the petitioners  
Gene and Amy Poker, BA08:042, petitioners  
David Koeper, BA08:043, petitioner  
Bill Koeper, BA08:043, father of the petitioner  
Attorney Rodney Carter, Schott, Bublitz & Engel S.C.,  
BA08:044, representing the petitioner (U.S. Cellular)  
Kevin Fraley, U.S. Cellular Engineer, BA08:044  
Sandra Peters, U.S. Cellular Regional Construction Manager,  
BA08:044  
Jim Warden, USA Mobility, BA08:044  
James Hock, Garvin Lake, LLC, BA08:049, petitioner  
Attorney Kathryn Sawyer Gutenkunst, Cramer, Multhauf &  
Hammes, LLP, BA08:049, representing the petitioner  
Attorney Thomas Lyons, BA08:049, representing Robert  
Stockdale (owner)  
Mark Powers, Lake Country Engineering, Inc., BA08:049  
Attorney Jerome Iverson, BA08:049  
John Baumann, BA08:049, neighborhood resident  
Christopher and Kara Blake, BA08:049, neighborhood resident  
Mike Malahy, BA08:049, neighborhood resident  
Peg Menos, BA08:049, neighborhood resident  
Audrey Paringer, BA08:049, neighborhood resident  
Pat Reardon, BA08:049, neighborhood resident  
Gerald Snider, BA08:049, neighborhood resident  
Rob Ritter, BA08:049, neighborhood resident  
Dick Mace, Waukesha County Department of Parks and Land Use,  
Planning and Zoning Manager

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

#### **SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Day *I move to approve the Summary of the Meeting of July 23, 2008.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Mr. Schuett abstained because he was not present at the meeting of July 23, 2008.

#### **NEW BUSINESS:**

##### **BA08:024 RICK AND KATHLEEN SCHEFFLER** **(represented by Attorney Gregory Joseph of Machulak, Robertson & Sodos, S.C.):**

Mr. Bartholomew *I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report, with Condition No. 7 changed to read as follows:*

*Condition No. 7: "The property must be brought into compliance with the above conditions, and must be properly graded and stabilized in accordance with the approved plans, as required above, no later than June 15, 2009. Any work done to bring the property into compliance with the above conditions may be started this year, but any work started this year must be completed and the site must be stabilized, no later than October 15, 2008."*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the shore setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit two retaining walls, subject to the following conditions:

1. Walls 3, 4, and 5 must be removed and the property must be restored to natural grade. Wall 2 must be relocated so that it is a minimum of 5 ft. from the east lot line.
2. The patio/firepit must be removed from the property and the area must be stabilized with vegetation.
3. In order to ensure the removal and relocation of the walls does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of any permits.

The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage.

4. Walls 1 and 2 must be adequately screened with vegetation from view from the lake, per the Landscaping Plan submitted June 27, 2008. The vegetation must be sized appropriately to provide immediate screening of the walls upon installation. After installation, a site inspection of the property shall be conducted by the Planning and Zoning Division staff to ensure that this condition is met. A Declaration of Restrictions with a maintenance agreement for the vegetative screening must be prepared by the Planning and Zoning Division staff, signed and notarized by the petitioner and recorded in the Waukesha County Register of Deeds Office prior to the issuance of any permits.
5. Wall 6 must be relocated so as to be a minimum of 5 ft. from the property line, or approval must be received from the Town Plan Commission and the Waukesha County Park and Planning Commission to allow the wall within 5 ft. of the property line pursuant to Section 3(d)(5)(C) of the Waukesha County Shoreland and Floodland Protection Ordinance. If such approval is granted, a maintenance agreement, which includes an area 5 ft. from Wall 6 on the adjacent property to the east, must be obtained from said adjacent property owner to the east and recorded in the Waukesha County Register of Deed's office. The maintenance agreement must be submitted to the Planning and Zoning Division staff for review and approval, prior to its recordation in the Waukesha County Register of Deed's office.
6. After completion of the removal of and relocation of the walls, an as-built Plat of Survey must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review to ensure that the walls have been removed/relocated in accordance with the Board's decision.
7. The property must be brought into compliance with the above conditions, and must be properly graded and stabilized in accordance with the approved plans, as required above, no later than October 15, 2008.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request will require the removal of three very non-conforming, large retaining walls, and a patio with firepit from the property. The approval of this request will allow two retaining walls to remain on the property. Only a corner of Wall 1 and a portion of Wall 2 are encroaching on the setback and these remaining walls will be screened with vegetation from view from the lake. The Board of Adjustment may find that to allow a minor encroachment into the setback will be less detrimental to the shoreland area than the amount of disturbance it would require to remove the additional walls. Therefore, the approval of this request, as conditioned, will not be contrary to the public interest and will be within the purpose and intent of the Ordinance.

**BA08:042 GENE POKER:**

Mr. Dwyer

*I make a motion to **deny** the requested offset variance for the proposed detached garage, in accordance with the staff's recommendation, as stated in the Staff Report, but **approve** the other requested variances and special exception, subject to the conditions recommended in the Staff Report, with the elimination of Condition No. 8 and with Condition No. 2 modified to read as follows:*

*Condition No. 2: The new detached garage may be no larger than 960 sq. ft. This will permit the construction of a 24 ft. x 40 ft. detached garage, as proposed, or its equivalent. Not including the non-conforming shed (ice shanty) between the road and lake, this will result in an accessory building floor area ratio of approximately 6.9% and an overall floor area ratio, including the two proposed screen porches, of approximately 25.4%.*

*The reason for the decision to allow the garage to be constructed at the size proposed, rather than at the size recommended by the staff, is because it is felt that it is preferable to store boats and cars in a structure rather than out in the yard.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of a variance from the offset requirement of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the proposed detached garage, but **approval** of a special exception from the accessory building floor area ratio requirement and of a variance from the floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the existing detached garage to be replaced by a larger detached garage, and **approval** of variances from the remodeling a non-conforming structure in excess of 50% of its fair market value provision and from the floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit screen porch additions to the residence and a deck expansion, subject to the conditions listed below.

1. The new detached garage must be located in conformance with the offset requirement of the Ordinance and if it is less than 10 ft. from the detached garage on the adjacent lot to the west, the new detached garage must contain a firewall sufficient to meet the one-hour fire rating contained in the building code.

Note: Conformance with the offset requirement will require the new garage to be at least 5 ft. from the side lot line, with an overhang not to exceed 2 ft. in width, unless the "clustering" provision of the Ordinance is utilized. The "clustering" provision of the Ordinance may be used to allow the new garage to be as close to the common lot line as the detached garage on the adjacent lot, provided the building sidewalls are no closer than 3 ft. to each other. Utilization of the "clustering" provision will also require that a deed restriction, prohibiting the installation of fences between the detached garages and permitting maintenance of the detached garages from the adjacent properties, must be signed by both the owner(s) of the subject property and the owner(s) of the adjacent lot to the west and recorded in the Waukesha County Register of Deeds office.

2. The new detached garage may be no larger than 576 sq. ft. This will permit the construction of a 24 ft. x 24 ft. detached garage, or its equivalent. Not including the non-conforming shed between the road and lake, this will result in an accessory building floor area ratio of approximately 4.1% and an overall floor area ratio, including the two proposed screen porches, of approximately 22.6%.
3. The new detached garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
4. The proposed garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
5. Prior to the issuance of a Zoning Permit for a new detached garage, plans for the detached garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a Zoning Permit for a new detached garage, a Plat of Survey showing all existing structures and the staked-out location of the proposed detached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. If the "clustering" provision of the Ordinance is to be utilized to permit the new detached garage to be located less than 5 ft. from the west lot line, the Plat of Survey must also indicate the offset of the detached garage on the adjacent lot to the west from the common lot line.
7. No changes to the existing grade will be permitted.
8. The non-conforming shed between the road and the lake must be removed from the property, prior to the issuance of a Zoning Permit for either the construction of a new detached garage or for the proposed screen porch additions or deck expansion.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of the requested offset variance to permit the proposed new detached garage to be constructed 3 ft. from the west lot line would be unnecessarily burdensome, since the required offset for a detached garage is only 5 ft. and is subject to further reduction if the "clustering" provision of the Ordinance, as explained in Condition No. 1, is utilized. Therefore, the approval of an offset variance would not be in conformance with the purpose and intent of the Ordinance.

However, hardships do exist with respect to the floor area ratio and remodeling a non-conforming structure in excess of 50% of its fair market value. Even without the proposed screen porches and the non-conforming shed, conformance with the maximum permitted floor area ratio of 19.5%

would allow only the construction of a 299 sq. ft. replacement garage. That would be unnecessarily burdensome because it would not permit the existing deteriorated garage, which is 400 sq. ft., to be replaced at the same size. The proposed screen porches will be located on an existing deck and while they would increase the floor area ratio slightly, they will not decrease the open space and are not contrary to the public interest. The requested variance to remodel the non-conforming residence over 50% of its fair market value is necessary only because the 50% limit is cumulative over the lifetime of the building and the 50% limit was exceeded when the residence was rebuilt on a portion of the existing foundation. Denial of a variance to remodel a non-conforming structure in excess of 50% of its fair market value would be unnecessarily burdensome because it would prevent even the proposed minor changes to the deck and the addition of the two small screen porches, which are in conformance with all locational requirements of the Ordinance.

Finally, some relief from the maximum permitted accessory building floor area ratio of 3% is justified, since conformance with 3% limit would permit a new detached garage of only 419 sq. ft. However, it is felt that the proposed 24 ft. x 40 ft. (960 sq. ft.) garage is too large for the lot. Although the relief sought from the maximum permitted accessory building floor area ratio limit of 3% is a special exception, rather than a variance, and does not necessarily require the demonstration of an unnecessary hardship, it is felt that a new detached garage with a maximum size of 576 sq. ft., which would permit a 24 ft. x 24 ft. detached garage, as recommended, is appropriately sized for the lot. Therefore, the approval of a special exception from the accessory building floor area ratio requirement and of a variance from the floor area ratio requirement, to permit the construction of a new larger detached garage, and the approval of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the floor area ratio requirement, to permit the proposed screen porch additions and deck expansion, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA08:043 DAVID AND RACHEL KOEPER:**

**Note: Tom Day recused himself from this case and left the table during the public hearing. He did not participate in the public hearing and he abstained from voting on the decision.**

Mr. Bartholomew *I make a motion to conditionally approve variances from the offset, private road setback, shore setback, floodplain setback, floor area ratio, and open space requirements, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried with four yes votes. Mr. Day abstained.

The Planning and Zoning Division staff's recommendation was for **conditional approval** of variances from the offset, private road setback, shore setback, floodplain setback, floor area ratio, and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the existing residence, attached garage and retaining walls to be replaced with a new residence, attached garage and retaining walls, subject to the following conditions:

1. The non-conforming shed near the lake must be removed from the property, prior to the issuance of a Zoning Permit for the new residence and attached garage.

2. The proposed residence and attached garage must be reduced in size so the building footprint, including the attached garage and any covered porches, does not exceed 1,500 sq. ft.
3. The new residence must have a first floor area of at least 850 sq. ft. and an attached garage of at least 400 sq. ft. The total floor area of the new residence and attached garage, including the first and second floors of the residence and any covered porches, but not the basement of the residence or any unroofed decks, shall not exceed 2,400 sq. ft. This will result in a maximum floor area ratio of approximately 29.1%. Note: In order to be considered to be a basement, the lowest floor of the residence must be at least one-half below grade on at least one side.
4. The new residence must conform with the height requirements of the Ordinance, i.e., it cannot exceed 46 ft., as measured from the lowest exposed point of the structure to the highest point of the roof; 36 ft., as measured from the lowest exposed point of the structure to any eave; or 27 ft., as measured from the lowest exposed point of the structure to the highest floor line; and it cannot contain more than three stories when viewed from the lake.
5. The residence and attached garage, must be at least 7 ft. from the north lot line, as measured to the outer edge of the wall, with an overhang not to exceed 2 ft. in width.
6. The new residence and attached garage must be at least 35 ft. from the Ordinary High Water Mark of Eagle Spring Lake on the east side and at least 50 ft. from the Ordinary High Water Mark of Eagle Spring Lake on the west side. All appurtenances, such as covered porches, decks, patios, stoops, or stairs must be also meet the shore setback requirements noted above. Note: Based on a recent Ordinary High Water Mark determination by the Wisconsin Department of Natural Resources (DNR), the Ordinary High Water Mark of Eagle Spring Lake in this area is at an elevation of 820.93.
7. The lowest level of the new residence must be at or above the 100-year flood elevation of 822.
8. The residence shall be designed to fit into the existing topography, with minimal changes to the existing grades. If necessary, the existing retaining walls in the proximity of the attached garage may be replaced, but any new retaining walls must be located at least 5 ft. from the side lot line and they must not exceed 4 ft. in height.
9. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of as much of the proposed residence and attached garage as possible, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The Plat of Survey shall also show the location of all proposed appurtenances, such as decks, patios, walkways, stairs, or retaining walls.
11. In order to ensure the construction of a new residence and attached garage does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning Division staff for review and approval, prior to the issuance of a Zoning Permit. The following information must also be

submitted along with the grading and drainage plan: a timetable for completion, the source and type of any fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading Plan may be combined with the Plat of Survey required in Condition No. 10.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Hardships exist, due to the size and configuration of the lot and the topography. Conformance with the shore and floodplain setback requirements is impossible, given the shallow lot depth and because the lot is located on a peninsula. Conformance with the offset and private road setback requirements is not possible without further compromise to the shore setback. Given the lot size of approximately 8,245 sq. ft., it is also impossible to comply with the minimum open space requirement of 15,000 sq. ft. and it is unnecessarily burdensome to comply with maximum permitted floor area ratio of 15%, which would permit a total floor area, including both floors of the residence and the attached garage, of only 1,237 sq. ft.

However, variances should only be granted to provide the minimum relief necessary for a reasonable use of the property. While the petitioners may desire a larger home and attached garage, the variances that are required to permit the proposed four-bedroom residence, which has a floor area of 2,329 sq. ft., not including additional finished living area in the exposed basement, and the proposed attached garage, which is 806 sq. ft., exceed the minimum relief necessary for a reasonable use of the property. Further, the construction of a new residence and attached garage, as proposed, less than 2 ft. from the side lot line, is contrary to the purpose and intent of the Ordinance, as the structure could not be maintained without trespassing onto the adjacent property. As recommended, the new residence and attached garage could be slightly larger than the existing residence and attached garage, but they would have approximately the same footprint as the existing structures and would be located in a more conforming location. In addition, an extremely non-conforming shed, located only 4 ft. from the lake, would be eliminated. Therefore, the approval of variances from the offset, private road setback, shore setback, floodplain setback, floor area ratio and open space requirements, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

**BA08:044 PAYNE AND DOLAN, INC. d/b/a WAUKESHA LIME AND STONE (Property Owner), US Cellular (Telecommunications Tower Owner), represented by Attorney Rodney Carter**

Mr. Day

*I make a motion to deny the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*



The motion was seconded by Mr. Dwyer and carried with three yes votes from Mr. Bartholomew, Mr. Dwyer and Mr. Day. Mr. Schuett and Mr. Ward voted no.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for an after-the-fact variance from the height limitation, as set forth in the Waukesha County Airport Height Limitation Zoning Ordinance (HLZO), to permit the U.S. Cellular telecommunications tower on the Payne & Dolan site to remain at its present elevation, which exceeds the airport height limits by approximately 121 ft.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The staff has no objection to the maintenance of a tower at a conforming height along with its various user antennae on the tower. However, in the interest of the public safety of the airport and its pilots using said facilities, it is inappropriate to recommend this tower exceeding the limitations of the airport height ordinance, in light of its orientation in extremely close alignment with the take off and landing approach zones to the east-west runway, be allowed. The petitioner does indicate various unique features and circumstances surrounding this tower and its uses. However, the staff does not see any unique features of this site, which could not be accommodated at another conforming location. It is our belief that a more appropriate and conforming location for such a tower is available and could be permitted. Alternative locations should be explored so as not to continue to impair or adversely impact the safety of Waukesha County airport users. Staff does not feel that any circumstances or a hardship exists for continuing the existence of this tower and its non-conforming height condition in violation of the airport height ordinance. It is further noted that the FAA did indicate in its letter of determination, that required conformance with local ordinances was necessary, which this tower has failed to meet.

**BA08:049 GARVIN LAKE, LLC c/o JAMES HOCK (petitioner)**  
**represented by Attorney Kathryn Sawyer Gutenkunst**  
**Robert Stockdale (owner), represented by Attorney Thomas Lyons**

Mr. Bartholomew                      *I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of variances from the lot size, lot width, access easement width, offset, shore setback, and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit a reconfiguration of the above-described lots and approve building envelopes on the re-configured lots, subject to the conditions listed below. The Planning and Zoning Division staff also recommended **approval** of variances to permit accessory buildings to remain on a lot without a principal structure (residence) and **approval** of a special exception from the accessory building floor area ratio requirement, to permit the proposed lot re-configuration, subject to the conditions listed below.

1. A Certified Survey Map, substantially in conformance with the proposed Certified Survey Map, dated June 23, 2008, on file with this variance request, must be recorded in the Waukesha County Register of Deed's office, following review and approval of the Certified Survey Map by the Town of Merton and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff.
2. A Storm Water Management Plan must be submitted to the Land Resources Division of the Waukesha County Department of Parks and Land Use for review and approval. The Storm Water Management Plan must be approved by the Land Resources Division of the Waukesha County Department of Parks and Land Use and a Certification of Compliance issued, prior to approval of the Certified Survey Map by the Planning and Zoning Division staff.
3. As required by the Waukesha County Shoreland and Floodland Protection Ordinance, a paved or gravel driveway, at least 12 ft. wide, must be provided within the ingress-egress easement serving Lot 4 and a paved or gravel roadway, at least 16 ft. in width, must be provided within that portion of the Garvin Lane private right-of-way adjacent to the subject property.
4. If it is determined by the Town of Merton that the driveway/roadway widths required above are not adequate to allow emergency vehicles to access the property, the driveway/roadway widths shall be increased to the minimum width determined by the Town of Merton to be necessary to allow emergency vehicles to access the property.
5. The Planning and Zoning Division staff must be advised by the Town of Merton that the proposed turnaround easements at the end of Garvin Lane are adequate for their emergency vehicles.
6. The north line of proposed Lot 3 may be located 8.75 ft. from the existing residence, but any new buildings constructed on Lot 3 will be required to have a minimum offset of at least 10 ft. from the north lot line. The building envelope on the proposed Certified Survey Map shall be revised in accordance with this condition.
7. The existing detached garage on proposed Lot 1 and the existing shed on proposed Lot 2 shall be removed from those lots, no later than two (2) years after the date of recordation of the Certified Survey Map, unless residences have been constructed or are in the process of being constructed on those respective lots. This condition shall be noted on the Certified Survey Map.
8. The maximum permitted floor area ratio on the four re-configured lots shall not exceed 15%. This condition shall be noted on the Certified Survey Map.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances would prohibit any re-configuration of the existing lots, which would be unnecessarily burdensome. While the proposed lots do not meet the minimum lot size and lot width requirements for lots on a private road, they are larger and wider than many of the existing lots on Okauchee Lake. Further, granting the variances and special exception necessary to re-configure the existing

seven (7) plus lots of record into four (4) lots is in the public interest because it would eliminate the possibility that the existing extremely substandard lots of record could be sold separately and multiple parties could request variances to permit them to be developed separately. Due to the physical limitations imposed by the shallow lot depths and steep slopes, it would also be unnecessarily burdensome not to grant some relief from the offset requirement and from the shore and floodplain setback requirements. However, while it is felt that it is appropriate to allow the offset of the existing residence from the north lot line to be maintained with the lot re-configuration, it is also felt that the building envelope for a new residence on the re-configured lot should be located at least 10 ft. from the side lot line. Therefore, the approval of the requested special exception and variances, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:**

None.

**ADJOURNMENT:**

Mr. Dwyer *I make a motion to adjourn this meeting at 10:42 p.m.*

The motion was seconded by Mr. Schuettand carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment